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JUVENILE COURT. DEPENDENCY HEARINGS. INITIATIVE STATUTE

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JUVENILE COURT. DEPENDENCY HEARINGS. INITIATIVE STATUTE California Initiative 911 (2001).
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BILL JONES
Secretary of State
State of California

ELECTIONS DIVISION

(916) 657-2166
1500 - 11th STREET
SACRAMENTO, CA 95814
Voter Registration Hotline
1-800-345-VOTE
For Hearing and Speech Impaired
Only
1-800-833-8683
e-mail: comments@ss.ca.gov

September 10, 2001

TO: ALL COUNTY CLERKS/REGISTRARS OF VOTERS AND
PROPOSERS (01150)

FROM:

Brianna Lierman
BRIANNA LIERMAN
ELECTIONS ANALYST

RECEIVED

SEP 12 2001

SUBJECT: FAILURE OF INITIATIVE #911

Pursuant to Elections Code section 9030(b), you are hereby notified that the total number of signatures to the hereinafter named proposed INITIATIVE STATUTE with all county elections officials is less than 100 percent of the number of qualified voters required to find the petition sufficient; therefore, the petition has **failed**.

TITLE: Juvenile Court. Dependency Hearings.

SUMMARY DATE: March 28, 2001

PROPOSER: Thomas Hiltachk



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BILL JONES
Secretary of State
State of California

March 28, 2001

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TO: ALL REGISTRARS OF VOTERS, OR COUNTY CLERKS, AND PROPONENTS (01056)

FROM: *Debbie Westlake*
DEBBIE WESTLAKE
ELECTIONS ANALYST

SUBJECT: **INITIATIVE #911**

Pursuant to Elections Code section 336, we transmit herewith a copy of the Title and Summary prepared by the Attorney General on a proposed initiative measure entitled:

**JUVENILE COURT. DEPENDENCY HEARINGS.
INITIATIVE STATUTE.**

The proponent of the above-named measure is:

Mr. Thomas Hiltachk
Bell, McAndrews, Hiltachk & Davidian, LLP
455 Capitol Mall, Suite 801
Sacramento, CA 95814

(916) 442-7757

RECEIVED

MAR 29 2001

#911
JUVENILE COURT.
DEPENDENCY HEARINGS.
INITIATIVE STATUTE.

CIRCULATING AND FILING SCHEDULE

1. Minimum number of signatures required: 419,260
California Constitution, Article II, Section 8(b)
2. Official Summary Date:..... Wednesday, 03/28/01
Elections Code section (EC§) 336
3. Petitions Sections:
 - a. First day Proponent can circulate Sections for
signatures (EC §336) Wednesday, 03/28/01
 - b. Last day Proponent can circulate and file
with the county. All sections are to be filed at the
same time within each county (EC §336, 9030(a)) Monday, 08/27/01*
 - c. Last day for county to determine total number of
signatures affixed to petitions and to transmit total
to the Secretary of State (EC §9030(b)).....Friday, 09/07/01

(If the Proponent files the petition with the county on a date prior to 08/27/01,
the county has eight working days from the filing of the petition to determine the
total number of signatures affixed to the petition and to transmit the total to the
Secretary of State) (EC §9030(b)).
 - d. Secretary of State determines whether the total number
of signatures filed with all county clerks/registrars of
voters meets the minimum number of required signatures,
and notifies the counties (EC §9030(c))..... Sunday, 09/16/01**
 - e. Last day for county to determine total number of qualified
voters who signed the petition, and to transmit certificate
with a blank copy of the petition to the Secretary of State
(EC §9030(d)(e)) Monday, 10/29/01

*Date adjusted for official deadline which falls on Saturday (EC §15).

**Date varies based on receipt of county certification.

INITIATIVE #911

Circulating and Filing Schedule continued:

(If the Secretary of State notifies the county to determine the number of qualified voters who signed the petition on a date other than 09/16/01, the last day is no later than the thirtieth day after the county's receipt of notification). (EC §9030(d)(e)).

- f. If the signature count is more than 461,186 or less than 398,297 then the Secretary of State certifies the petition as qualified or failed, and notifies the counties. If the signature count is between 398,297 and 461,186 inclusive, then the Secretary of State notifies the counties using the random sampling technique to determine the validity of **all** signatures (EC §9030(f)(g); 9031(a)) Thursday, 11/08/01*

- g. Last day for county to determine actual number of all qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State (EC §9031(b)(c)). Monday, 12/24/01

(If the Secretary of State notifies the county to determine the number of qualified voters who have signed the petition on a date other than 11/08/01, the last day is no later than the thirtieth working day after the county's receipt of notification). EC §9031(b)(c).

- h. Secretary of State certifies whether the petition has been signed by the number of qualified voters required to declare the petition sufficient (EC §9031(d); 9033)..... Friday, 12/28/01*

NOTE TO PROPONENTS WHO WISH TO QUALIFY FOR THE MARCH 5, 2002, PRIMARY

ELECTION: This initiative must be certified for the ballot 131 days before the election (October 25, 2001). Please remember to time your submissions accordingly. For example, in order to allow the maximum time permitted by law for the random sample verification process, it is suggested that proponents file their petitions with county elections officials by August 17, 2001. If a 100% check of signatures is necessary, it is advised that the petitions be filed by June 26, 2001.

* Date varies based on receipt of county certification.

IMPORTANT POINTS

- California law prohibits the use of signatures, names and addresses gathered on initiative petitions for any purpose other than to qualify the initiative measure for the ballot. This means that the petitions cannot be used to create or add to mailing lists or similar lists for any purpose, including fundraising or requests for support. Any such misuses constitutes a crime under California law. Elections Code section 18650; *Bilofsky v. Deukmejian* (1981) 123 Cal. App. 3d 825, 177 Cal. Rptr. 621; 63 Ops. Cal. Atty. Gen. 37 (1980).
- Please refer to Elections Code sections 100,101,104,9001, 9008, 9009, 9021, and 9022 for appropriate format and type consideration in printing, typing and otherwise preparing your initiative petition for circulation and signatures. Please send a copy of the petition after you have it printed. This copy is not for our review or approval, but to supplement our file.
- Your attention is directed to the campaign disclosure requirements of the **Political Reform Act of 1974**, Government Code section 81000 et seq. A brief summary is attached for your reference.
- When writing or calling state or county elections officials, provide the official title of the initiative which was prepared by the Attorney General. Use of this title will assist elections officials in referencing the proper file.
- When a petition is presented to the county elections official for filing by someone other than the proponent, the required authorization shall include the name or names of the persons filing the petition.
- When filing the petition with the county elections official, please provide a blank petition for elections official use.

Enclosures

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550
Public: (916) 445-9555

Facsimile: (916) 324-8835
(916) 324-5490

March 28, 2001

FILED
In the office of the Secretary of State
of the State of California

MAR 28 2001

Bill Jones
Secretary of State
1500 - 11th Street, 5th Floor
Sacramento, California 95814

BILL JONES, Secretary of State
By *D. Westlake*
Deputy Secretary of State

RE: Initiative Title and Summary
SUBJECT: JUVENILE COURT. DEPENDENCY HEARINGS. INITIATIVE STATUTE.
FILE NO: SA2001RF0004

Dear Mr. Jones:

Pursuant to the provisions of sections 9004 and 336 of the Elections Code, you are hereby notified that on this day we mailed our title and summary to the proponent of the above-identified proposed initiative.

Enclosed is a copy of our transmittal letter to the proponent, a copy of our title and summary, a declaration of service thereof, and a copy of the proposed measure.

According to information available in our records, the name and address of the proponent is as stated on the declaration of service.

Sincerely,

Tricia Knight
TRICIA KNIGHT
Initiative Coordinator

For BILL LOCKYER
Attorney General

TK:cw
Enclosures

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

JUVENILE COURT. DEPENDENCY HEARINGS. INITIATIVE STATUTE. Allows jury trial on allegations of abuse or neglect in juvenile dependency hearings. Requires public hearings, unless a finding of serious harm or harm to the child's best interest. Grants such hearings precedence over civil matters. Requires good cause showing for continuance; court may not grant continuance if contrary to child's interest or beyond 30 days following removal of the child absent a finding of exceptional circumstances. Prohibits support and cost reimbursement order if petitioner's request for continuance granted. Creates preference for relative placement where child is initially removed from parents. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: The net fiscal impact of this initiative is unknown due to the potential unknown state costs related to court activities for juvenile dependency jury trials and the potential unknown foster care costs or savings, depending on how the change to a jury trial system alters foster care placement outcomes.

SA2001RF0004
BELL, McANDREWS, HILTACHK & DAVIDIAN, LLP

ATTORNEYS AND COUNSELORS AT LAW

455 CAPITOL MALL, SUITE 801

SACRAMENTO, CALIFORNIA 95814

(916) 442-7757

FAX (916) 442-7759

CHARLES H. BELL, JR.
COLLEEN C. McANDREWS
THOMAS W. HILTACHK
BEN DAVIDIAN
JOSEPH A. GUARDARRAMA
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OF COUNSEL

1441 FOURTH STREET
SANTA MONICA, CA 90401
(310) 458-1405
FAX (310) 260-2666
www.bmhlaw.com

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FEB - 2 2001

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Tricia Knight,
Initiative Coordinator
Department of Justice
1300 I Street
Sacramento, CA 95814

Dear Ms. Knight:

Please find enclosed an initiative entitled the "Child and Family Protection Act".
I am the proponent and my address is It is
submitted for title and summary.

Also enclosed, please find the \$200 filing fee.

If you have any questions, please contact me directly at (916)442-7757.

Very truly yours,

Thomas W. Hiltachk

Enclosures
1594.01

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

SECTION 1. Declaration of Findings and Purposes

- a) The protection of California's most vulnerable citizens, its children, should be the most important objective of government.
- b) Although providing an important public service, current programs designed to protect children often times do more harm than good. Far too many tragedies, including serious physical and emotional injury to children and the unnecessary destruction of families, have occurred in recent years. The system must be reformed to restore fundamental fairness and promote protection of children and preservation of families.
- c) California law requires cases where a child has been removed from his or her family due to alleged abuse or neglect to be heard within 15 days in order to bring speedy resolution to the matter and to minimize trauma to the child. However, thousands of children are kept away from their families for months on end by unnecessary government delays, resulting in tremendous costs to parents and taxpayers. In many cases, other family members are willing and able to care for these children, yet the current system does not promote preservation of the family.
- d) The right to a jury trial is fundamental in our system of government. However, under existing law, a child can be removed from the care of his or her parents based only on allegations of abuse or neglect without the government having to present evidence justifying removal to a judge and jury.
- e) This system, designed by politicians to protect children, instead often results in delay, excessive costs, mistakes, and family break-ups. IT IS IMPORTANT TO PROTECT CHILDREN FROM ABUSE AND NEGLECT, BUT IT IS JUST AS IMPORTANT TO MAKE SURE THAT CHILDREN ARE NOT WRONGFULLY REMOVED FROM THEIR PARENTS IN THE FIRST PLACE.
- f) Abuse of the process is cloaked in secrecy because such juvenile proceedings are not open to the public.
- g) Recently, several studies, grand jury investigations, and oversight hearings have brought these problems into clear focus. However, our elected representatives have failed to take action.
- h) In order to protect the health and well-being of children, the people of the state of California hereby enact the Child and Family Protection Act to establish the right to a jury in juvenile dependency hearings, the right to a public hearing, the right to a speedy resolution and the promotion of family over government-sponsored care whenever possible.

SECTION 2. Right to Jury Trial

Section 336.1 of Article 9 of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code is added to read:

§ 336.1. In addition to the requirements of section 336, the notice shall also contain a statement that the parent or guardian or adult relative to whom notice is required to be given, and the minor, are entitled to request a jury for the hearing on the petition and that such a request must be made prior to or at the beginning of the hearing. If a jury is requested by the petitioner, the request shall be made in the petition.

Section 351 of Article 9 of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code is added to read:

§ 351(a) At the beginning of the hearing on a petition filed pursuant to Article 8 (commencing with Section 325) of this chapter, the judge shall inform the minor who is the subject of a juvenile court hearing or counsel for the minor, the parent or guardian or adult relative to whom notice is required to be given, and the petitioner of the right to a jury.

(b) If a jury is requested, the judge shall proceed to empanel a jury of twelve persons to hear evidence and make a finding establishing jurisdiction pursuant to section 355 and 355.1. The parties can agree to a lesser number of jurors upon the approval of the court.

(c) A jury shall make a finding pursuant to section 356 only upon the concurrence of at least three-fourths of the members of the jury.

(d) Judicial Council shall adopt procedures for requesting a jury, voir dire, jury selection and such other matters deemed necessary to protect the right to have findings of fact made by a jury in a jurisdictional hearing.

Section 356 of Article 9 of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code is amended to read:

§ 356 After hearing the evidence, the court or jury, if requested pursuant to this Article, shall make a finding, noted in the minutes of the court, whether or not the minor is a person described by Section 300 and the specific subdivisions of Section 300 under which the petition is sustained. If ~~it~~ the court or jury finds that the minor is not such a person, ~~it~~ the court shall order that the petition be dismissed and the minor be discharged from any detention or restriction theretofore ordered. If the court or jury finds that the minor is such a person, ~~it~~ the court shall make and enter its findings and order accordingly.

SECTION 3. Right to a Public Trial

Section 346 of Article 9 of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code is amended to read:

§ 346(a) ~~Unless an objection is made by the child concerning whom the petition has been filed, by the child's attorney, or by any other party to the proceeding, or a motion is made by the court requested by a parent or guardian and consented to or requested by the minor concerning whom the petition has been filed,~~ the public shall not be ~~excluded from~~ admitted to a juvenile court hearing. The judge or referee may nevertheless admit such persons as he or she deems to have a direct and legitimate interest in the particular case or the work of the court.

(b)(1) If an objection or motion is made by the child or the child's attorney, the court may exclude the public from a juvenile court hearing if it makes a finding on the record that admitting the public would cause harm to the child's best interest.

(2) If an objection or motion is made by the court or any party to the proceeding other than the child or the child's attorney, the court may exclude the public from a juvenile court hearing only if it makes a finding on the record that admitting the public would cause serious harm to the child's best interest.

(c) The child's attorney shall advise the child of the right to have the hearing closed pursuant to this section. If there is no attorney present, the court shall advise the child of this right. The court shall, in every case, ensure that the child's attorney has advised the child of the right to request the hearing be closed.

(d) If the court finds that opening the court hearing to the public would cause serious harm to the child's best interest, the court may consider less restrictive means than closing the hearing in order to protect the child's best interest. Less restrictive means may include procedures to ensure the child's name or other identifying information remains confidential.

(e) Nothing in this section shall limit the court's right to take the child's testimony in chambers pursuant to Section 350.

SECTION 4. Right to Speedy Resolution

Section 345.5 of Article 9 of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code is added to read:

§ 345.5 Notwithstanding any other provision of law, a jurisdictional hearing under this chapter in which the minor is detained and the sole allegation is that the minor is a person described in Section 300 shall be granted precedence over civil matters on the master calendar of the superior court for the day on which the case is set for hearing and on each successive day until that matter can be heard.

Section 351.5 of Article 9 of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code is added to read:

§ 351.5 (a) The court, on its own motion or at the request of counsel for the parent, guardian, minor, or petitioner, may not continue a jurisdictional hearing under this chapter beyond the time limit within which the hearing is otherwise required to be held pursuant to section 334, if the continuance would be contrary to the interest of the minor. In considering the minor's interests, the court shall give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements.

(b) Continuances shall be granted only upon showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance. Neither a request for a jury, the unavailability of a judge or courtroom, a stipulation between counsel, nor the convenience of the parties is in and of itself a good cause. Further, a pending family law matter shall not be considered in and of itself as good cause. Whenever any continuance is granted, the facts proven which require the continuance shall be entered upon the minutes of the court.

In order to obtain a motion for a continuance of the hearing, written notice shall be filed at least two court days prior to the date set for hearing, together with affidavits or declarations detailing specific facts showing that a continuance is necessary, unless the court for good cause entertains an oral motion for continuance.

(c) Notwithstanding any other provision of law, if a minor has been removed from the parents' or guardians' custody, no continuance shall be granted that would result in the jurisdictional hearing being completed longer than 30 days after the which the minor was removed unless the court finds that there are exceptional circumstances requiring such a continuance. The facts supporting such a continuance shall be entered upon the minutes of the court.

(d) If a continuance is requested by the petitioner and granted by the court, the petitioner may not seek and the court may not order the payment of support and reimbursement of costs as requested in the petition pursuant to section 332(h).

SECTION 5. Preference of Families over Foster Care

Section 319.5 of Article 9 of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code is added to read:

§ 319.5. In any case in which a child is removed from the physical custody of his or her parents pursuant to section 319, the court shall give preferential consideration to the placement of the child with a relative. Section 361.3 shall govern the application and interpretation of this section.

SECTION 6. Amendment

Section 3 of this measure, amending Section 346 of Article 9 of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code may be amended or repealed by a statute passed in each house of the Legislature by rollcall vote entered in the journal, if the director of the State Department of Social Services informs the Legislature that the United States Department of Health and Human Services has notified the state that, as a result of the provisions of this section, this state is out of compliance with federal confidentiality requirements governing the administration of the federal Title IV-E or Title IV-B programs and will result in the loss of federal funds.

SECTION 7. Severability

If any provision of this measure or the application thereof to any person or circumstance is held invalid for any reason, such invalidity shall not affect any other provisions or applications of this measure which can be given effect without the invalid provisions or applications, and to this end the provisions of this measure are severable.